

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

MELVIN WADE GRIMES, JR.

PLAINTIFF

V.

NO: 3:15CV00098 DPM/PSH

BRETT DUNCAN *et al*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATION

INSTRUCTIONS

The following Proposed Findings and Recommendation have been sent to United States District Judge D.P. Marshall Jr. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

DISPOSITION

Plaintiff Melvin Wade Grimes, Jr. filed a *pro se* complaint, pursuant to 42 U.S.C. § 1983, on April 17, 2015. On November 4, 2015, after plaintiff notified the Court he had been released from custody, the Court entered an order directing plaintiff to pay the balance of his filing fee, or to file a new application for leave to proceed *in forma pauperis* (docket entry 34). An IFP application was mailed to plaintiff the same day. The order also warned plaintiff that his failure to comply within 30 days would result in the recommended dismissal of his complaint. More than 30 days have passed, and plaintiff has not filed an updated application for leave to proceed *in forma pauperis*, paid the balance of his filing fee, or otherwise responded to the order. Under these

circumstances, the Court concludes that plaintiff's complaint should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2), and failure to respond to the Court's order. *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2), and failure to respond to the Court's order.
2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 8th day of December, 2015.



UNITED STATES MAGISTRATE JUDGE